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certainly that some mistakes and abuses would occur in the administration of such a law was to be weighed by Congress against the practical certainty that without it a good deal of ill-intentioned and actually mischievous propaganda could not be checked by lawful means, and was pretty certain to be dealt with by unlawful violence. To the reviewer it seems impossible fairly to say that the judgment Congress passed upon this question was in its essential features unreasonable, in view of the existing information and temper of the country; and, if not, its action was constitutional, unless free speech is subject in time of war to qualifications of a markedly different character from those of other important constitutional rights. For the latter view there seem to be no historical, logical, or practical arguments so conclusive as to remove the matter from the proper sphere of legislative discretion.

Perhaps an undue amount of space has been given to a criticism of the author's views upon a single topic, but Professor Chafee's argument is so candid and forceful that it seems worth while to sketch with some fullness the opposing view. And, in regard to some other topics of the book, where a seriously reasoned dissent from his position is possible, it rests upon substantially similar grounds, *i. e.*, a belief that he attributes too great a relative value to a somewhat dangerous degree of freedom of speech as compared with other war-imperiled social interests, and that he underestimates the war-time power for ill of the engines of modern publicity in cunning and unscrupulous hands. The correctness of such a belief is manifestly not susceptible of demonstration, and it is impossible to deny that its foundations may be largely temperamental, but so long as it is widely shared the validity of legislation based upon it seems fairly clear. See *Jacobson v. Massachusetts*, 197 U. S. 11, 34-35; *Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358, 364-366.

It is of course not difficult to find some regrettable errors and excesses in both the judicial and the executive administration of the Espionage Acts. Professor Chafee very properly points these out. His criticism of much that was done by the Department of Justice under the Deportation Act, and by the Postoffice Department under its power to exclude from the mails, will be generally approved by thoughtful men and women. And of course the expulsion of the Socialist members from the New York Assembly is too vulnerable to find defenders among the judicious.

To the reviewer the greatest value of Professor Chafee's book lies not in his specific conclusions upon controverted topics, but in the admirable manner in which he presents the arguments of policy for freer speech than a legislature need constitutionally grant in troubled times. Whether such arguments should prevail or not is always debatable, but it is a matter of the first importance that the legislature should have all that can be said against repression well presented before it comes to a decision. From this standpoint the author's views, both as to the substantive and the administrative features of laws limiting free speech, are worthy of the most careful consideration. And, finally, it is a pleasure to bear witness to the fine spirit and temper of the book, its fairness, its scholarship, its flashes of humor, and (most grateful to the reader) its forceful good English.

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INTERNATIONAL LAW AND THE WORLD WAR. By James Wilford Garner. In two volumes. 8vo. London and New York: Longmans, Green and Company. 1920. pp. xviii, 524; xii, 534.

This is a serviceable book. It is true that at least three impossibilities threaten the author's path toward perfection. On one side is the impossibility

of covering the whole of the facts and literature now known. On the other side is the impossibility of covering the facts and the literature to be discovered when to the innumerable documents already published and the newspapers of the time of the World War are added the more or less confidential reports of government officials, discussions by scientific men, reminiscences, and private correspondence. The third impossibility is found in the inability of any person, whether belligerent or neutral, to treat these problems without bias. The author shows in his preface an appreciation of the impossibilities; and he battles with them creditably.

The topics are selected with skill. The footnotes abound in references. The discussion is certainly written from the point of view taken by the Allied and Associated Powers, and especially by the United States; but there is an obvious attempt to present the other side, and as the work progresses this attempt becomes increasingly successful. The result is a book readable at the present time and useful permanently as a starting point for future investigators.

The nature of the ground covered is best indicated by mentioning a few of the many topics. Among the most important are: the force of the Hague Conventions of 1899 and 1907 in the World War, the force of the Declaration of London of 1909, the treatment of enemy diplomatic and consular representatives, the treatment of enemy aliens as regards liberty and property and access to the courts, enemy vessels in belligerent ports, transfer of merchant vessels to neutral flags, trade with the enemy, including corporations under enemy control and enemy persons in neutral countries, effect of war on contracts and partnerships, employment of civilians as shields against attack, devastation of enemy territory, submarine mines and war zones, submarine torpedo boats, the *Lusitania*, defensively armed merchant vessels, bombardment of undefended towns, destruction of the University of Louvain and the cathedral at Rheims, aerial warfare, bombing hospitals and sinking hospital ships, treatment of prisoners, military government in Belgium, requisitions and forced labor, deportation from occupied territory, the invasion of Belgium and Luxemburg, the violation of Chinese territory, the occupation of Greece, destruction of neutral merchant vessels, contraband, continuous voyage, the German submarine blockade of England, the Anglo-French blockade of Germany, the system of rationing neutrals, interference with mails and enemies on neutral vessels, exportation of arms and munitions to belligerents, loans to belligerent governments, internment of belligerent warships in neutral ports, taking of prizes into neutral ports, punishment of crimes committed in foreign territory or on the high seas, trial of offenders in their absence, and the decision of the Peace Conference regarding the trial of the German Emperor.

That is only a partial list. It is long enough to show the scope of the book, and also long enough to protect the author from any suspicion that in selecting topics he has omitted those of great difficulty. Any one acquainted with the subject can point to omissions; but the same person must recognize that the omissions are vastly less important than this impressive list of topics covered.

The discussion is usually adequate and clear. Now and then, especially when dealing with general subjects rather than with those of a narrow nature, it omits something which may be obvious to the author but which is not quite obvious to the ordinary reader.

For example, in dealing with the general question whether the Hague Conventions of 1899 and 1907 were in force throughout the World War, the author leaves something to be desired. He explains (§§ 16-18) that throughout the greater part of the war the Hague Conventions of 1907 were not in force, the reason being that some of the belligerent countries have thus far failed to give ratification or adhesion, and that thus those Conventions were inoperative by reason of their own express provisions. Nevertheless, he says (§ 17) that the Hague Convention of 1899 containing the regulations respecting the laws and cus-

toms of war on land was in force, but he fails to explain that this Convention contains a similar clause of suspension and that, as a comparison of the list of belligerents with a list of ratifying and adhering powers shows, there were at least three small belligerents — San Marino, Liberia, Costa Rica — not parties to this earlier Convention (§ 26; and Scott's Hague Conventions, 230-232). Further, he gives no specification showing that this Convention of 1899 was actually treated as binding. On the contrary, his facts show that as regards the pay of captive officers, the corresponding Convention of 1907 was appealed to, and that both the Convention of 1899 and the Convention of 1907 were disregarded (§ 335). Is the real truth that the Hague Conventions were not binding, and were not believed to be binding, but that they were frequently, and almost constantly, cited as mere evidence of sound international doctrine?

Again, the discussion of the Declaration of London of 1909, concerning the laws of naval war, seems to need clarification. The author perceives, but does not emphasize (§§ 20-24), that early in the World War Great Britain and France, though they had not ratified the Declaration, professed to adopt such of its novel provisions as were favorable to belligerents and simultaneously professed to reject such of its novel provisions as were favorable to neutrals, and that this mode of dealing with a compromise document was both questionable on general principles and contrary to one of the express provisions of the document itself. He also states that eventually the Declaration was wholly abrogated. What he might have brought out more clearly is that the Declaration as Declaration was never binding at all, that the parts of it already parts of international law were binding irrespective of this unratified Declaration, that the novel parts of it never became binding, and that from a recognition of the old parts and an occasional insistence upon the novel parts it is a mistake to infer any recognition of the Declaration as Declaration at any time.

On the other hand, when dealing with specific instances, the author usually gives such thorough and careful discussion as to deserve nothing but praise.

For example, when discussing with admirable fullness and fairness the German invasion of Belgium (§§ 431-452), he emphasizes a fact often forgotten, namely, that at the time of the invasion of Belgium the Hague Convention of 1907 respecting the rights and duties of neutral powers was binding as "at that moment all the belligerents were parties to the Convention, and it was, therefore, in accordance with the general participation clause binding upon all of them" (§ 448); and further that this Convention covered the case by saying in its first article that "the territory of neutral Powers is inviolable," and in its second article that "belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power."

Similarly, throughout the book the thorough presentation of individual instances discloses details which render the text interesting and valuable. For example, the discussion of attacks on hospitals and on hospital ships abounds in concrete facts (§§ 314-327). This is important. In dealing with frightfulness, concreteness is of the essence; for otherwise the outrageousness of the outrage cannot be appreciated. Regarding one hospital ship mentioned by the author — the *Glenart Castle* (§ 326) — it is now possible to add some picturesque details from a spectator, an American naval officer who was skilled in international law and thus took professional interest of two sorts. His hitherto unpublished account says:

"A short time ago we passed a hospital ship at night; and she was lit up like a Christmas tree — lights all over her, and a huge red cross in red lights, at least ten feet high, on each side. We recognized her for a hospital ship at about ten miles distance; and around here any ship that shows lights is out of the ordinary. Well, we passed her, and one of the men said to me, 'Gosh, would n't she make a fine target.' He was right, and she did; for they got her shortly

after, and she sank in four minutes. We found some of the survivors, though only a few. They were floating about on little rafts and on boxes. Only one had on more than pajamas. He had an overcoat as well. They had been drifting for nearly ten hours in a rough sea and were about done in. We found them scattered all over, only one or two to a raft, and each raft thought it held the only survivors. It took two hours to get them in, the sea was so rough and they were so helpless. Three of our men went overboard after one poor cuss who fell off his box just as we got to him. Well, I reckon you can see why we don't want to go home now. That sort of thing must not happen."

Such, then, are some of the concrete facts underlying any discussion of international law in the World War. If one looks at the facts alone, one is tempted to say that international law was wholly disregarded and that it is now dead. That, however, is a too pessimistic view. This book shows clearly that even those belligerents who most glaringly disregarded international law made denials and excuses, and that thus in a way they recognized the existence of international law and the duty of obeying it. That is the reason why the author of this book is entitled to close with a somewhat optimistic "outlook for the future" (§ 595). Indeed, he might have chosen as a proper motto for the title page his quotation from Sir Frederick Pollock: "Law does not cease to exist because it is broken or even because for a time it may be broken on a large scale."

EUGENE WAMBAUGH.

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